

THE HONORABLE KAREN L. STROMBOM

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GARY MOSER, a single man; and MATTHEW  
MOSER, a single man,

Plaintiffs,

PIERCE COUNTY, a municipal corporation,

Defendants.

NO. C04-5239 KLS

**PRE-TRIAL ORDER**

HEARING DATE: May 27, 2005

**JURISDICTION**

Jurisdiction is vested in this Court by virtue of 28 U.S.C. § 1331.

**CLAIMS AND DEFENSES**

Plaintiffs will pursue the following claims at trial: (1) a cause of action for defendants' violation of plaintiffs' civil rights under 42 U.S.C. § 1983 along with attorneys' fees and costs as provided by statute, and (2) a cause of action for negligence against defendants.

**ADMITTED FACTS**

1. At the age of 17 years old, Matthew Moser was arrested for burglary on October 30, 2002 and transported to the Pierce County Jail. This was Matthew's first confinement in an adult jail.

2. As part of their booking process, inmates are evaluated by booking officers and, if need be, medical personnel and mental health professionals. Inmates are normally classified per the Pierce County Jail Objective Jail Classification System to determine a placement for them in the jail.

3. Mental health professionals screened Matthew and he was identified to be developmentally delayed.

4. Two days after being brought to the Jail for pre-trial detention on November 1, 2002, MHP Jim Jorgenson conducted an evaluation of Matthew and noted, among other things, that Matthew "May be vulnerable due too mental disability. Please check with inmate periodically to see if he's being taken advantage of." At that time, Mr. Jorgenson recommended a single cell for housing for Mr. Moser.

5. Matthew was evaluated by Ann Elek, a Mental Health Professional on December 11, 2002. At that time, Ms. Elek entered in her report, among other items, that Matthew was "vulnerable, DD (developmentally delayed), and young."

6. David Marshall Nelson turned himself in to the Tacoma Police Department on December 15, 2002, after calling 911. He was arrested and booked into the Pierce County Jail for failing to register as a sex offender. Mr. Nelson had been convicted of molesting his own

1 daughter in 1991. At the time Mr. Nelson was arrested, arresting officers noted him as being  
2 potentially suicidal.

3 7. Upon arrest, TPD Officer Wade wrote into the police report that Nelson had  
4 indicated wanting "to commit suicide because he is not getting help for his 'urges' to attack  
5 and molest small children." Then, while Matthew was already in pre-trial confinement within  
6 the mental health unit, the Pierce County Jail booked Nelson on December 15, 2002 and  
7 placed him in the mental health unit of the jail as well. At the time of his arrest, Tacoma  
8 Police Department Officer Wade wrote that Mr. Nelson had indicated wanting to commit  
9 suicide because he was not getting help for his urges to attack and molest small children.  
10

11 8. By court order, Matthew was sent to Western State Hospital to undergo an  
12 evaluation of this mental condition, his capacity to understand the nature of the proceedings  
13 and to assist in his defense as a result of mental disease or defect. After the evaluations,  
14 Matthew was returned to the Pierce County Jail on January 31, 2003.  
15

## 16 17 **FACTUAL CONTENTIONS**

18 The Plaintiffs contend as follows:

19  
20 1. Defendant's officers improperly placed Matthew in a cell with Nelson despite  
21 the fact that Matthew was known to be susceptible to being taken advantage of, vulnerable,  
22 and Nelson was known to be dangerous and likely to harm or hurt people. This was done  
23 based upon the lack of policies, procedures, and training regarding inmate classification and  
24 housing and omissions of critical information from the behavioral logs.  
25  
26

1           2.     Pierce County failed to maintain and/or establish proper procedures for  
2 tracking inmates with unique susceptibility to ensure that dangerous cell placements did not  
3 occur.

4           3.     Pierce County failed to maintain and/or establish proper procedures for  
5 tracking exceedingly dangerous inmates such as sex offenders to ensure that dangerous cell  
6 placements did not occur.  
7

8  
9 The Defendant contends as follows:  
10

11           1.     Defendant Pierce County Jail operates a state of the art correctional institution.

12           2.     Pierce County employs an Objective Classification System which is, likewise,  
13 state-of-the-art and approved by the Federal Court.

14           3.     Pierce County properly and reasonably processed both David Nelson and  
15 Matthew Moser through this classification system, and each of them were given a  
16 classification number of 3, which was a reasonable decision.  
17

18           4.     Pierce County Mental Health Professionals regularly evaluated and  
19 interviewed both Matthew Moser and David Nelson to attend to their mental health concerns  
20 while inmates in the Pierce County Jail.

21           5.     The placement of Matthew Moser in the Mental Health Unit of the Pierce  
22 County Jail was a reasonable decision on the part of Pierce County Corrections Officials.

23           6.     The placement of David Nelson in the Mental Health Unit of the Pierce County  
24 Jail was a reasonable placement and within acceptable standards of corrections placement.  
25  
26

### Plaintiff Submits the Following Issues of Law:

2. During trial, Plaintiffs will request that the Court instruct the jury to render findings as to the following liability theories:

c. Whether Defendants acted unreasonably in placing Matthew in a cell with Nelson.

Defendants Submits the Following Issues of Law:

1. Whether Defendant Pierce County violated Matthew Moser's constitutional rights by maintaining a custom or policy that was deliberately indifferent to his needs in his classification, housing, and other treatment in the Pierce County Jail.

### EXPERT WITNESSES

The names and addresses of the expert witnesses to be used by each party at the trial and the issues upon which each will testify is:

Plaintiffs object to Defendant's disclosure of expert witnesses as these witnesses were first disclosed on May 18, 2005, 3 months after the discovery deadline and 3 weeks before trial. They were not disclosed in accordance with the civil rules or this Court's scheduling Order and no opinions of experts were provided as is required under FRCP 26(a)(2). As such, Plaintiffs had no opportunity to conduct discovery, determine rebuttal witnesses, or otherwise prepare to rebut the undisclosed opinions of these experts. This is the subject of a motion pending before the Court.

#### Plaintiffs:

Dr. Alvin Cohn (will testify)  
15005 Westbury Road  
Rockville, Maryland 20853

Dr. Cohn will address the liability of defendants including failure to follow applicable standards, failure to exercise reasonable care, failure to maintain and follow adequate jail policies and practices with respect to cell classification as was previously disclosed through expert reports and declarations.

1 Dr. Gilbert Kliman (will testify)  
2 2024 Divisadero Street  
3 San Francisco, CA 94115

4 Dr. Kliman will address issues regarding liability and damages as was previously  
5 disclosed through expert reports and declarations.

6 Defendants:

7 Allen W. Traywick, Ph.D.  
8 6314 – 19<sup>th</sup> Street West  
9 Fircrest, WA 98466  
10 253-752-1233

11 Dr. Traywick is anticipated to testify concerning the mental state of Matthew Moser,  
12 and to comment on the allegations as to the existence of post-traumatic stress disorder and as  
13 to the causes of such condition.

14 David Stewart  
15 Pierce County Human Services / Mental Health  
16 3580 Pacific Avenue  
17 Tacoma, WA 98418  
18 253-798-6199

19 Mr. Stewart will testify concerning the Pierce County Jail Health Services. He will  
20 render an opinion that Pierce County operates a state-of-the-art program for mental health  
21 services with the Pierce County Jail. He will testify about the local and national standard of  
22 care for mental health services and testify that those services provided by the Pierce County  
23 Jail exceed both local and national standards. He will testify that the procedures were  
24 followed in this case to classify and place both Matthew Moser and David Nelson in  
25 appropriate cell classifications. He will testify that Corrections Classifications Officers and  
26 Jail Mental Health Professionals acted reasonably and without any intention to do harm when

1 they evaluated the history and condition of both Matthew Moser and David Nelson in their  
2 placement of these two inmates in the same cell.

3 Ray J. Coleman  
4 22424 Northeast 20<sup>th</sup> Street  
5 Sammamish, WA 98074  
6 425-868-6950

7 It is anticipated that that he will testify that the Classification System used by the  
8 Pierce County Corrections Center is state-of-the-art and meets or exceeds the standards that  
9 exist locally and nationally. He is also anticipated to testify that Corrections Officers acted  
10 reasonably when they evaluated, classified, and housed Matthew Moser and David Nelson in  
11 this matter.

12 Eileen Bisson.  
13 Chief of Corrections  
14 Pierce County Corrections Bureau  
15 910 Tacoma Avenue South  
16 Tacoma, WA 98402

17 Ms. Bisson will testify concerning the Pierce County Jail Classifications System. She  
18 will testify as to regional and national standards with regard to classifications systems and  
19 will further testify that Pierce County meets and exceeds those standards with respect to those  
20 systems. She will further testify that the procedures and policies were followed assessing,  
21 classifying, and placing both inmate Matthew Moser and inmate David Nelson in this case.  
22 She will further testify that Pierce County Corrections Officers exhibited reasonable behavior  
23 with a complete absence of any intention to do any harm in their actions in the placement of  
24 both inmates in this case.  
25  
26



**OTHER WITNESSES**

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

On behalf of Plaintiffs:

Gary Moser and Matthew Moser (may testify)  
c/o Gordon, Thomas, Honeywell, et al.  
1201 Pacific Avenue, Ste. 2100  
Tacoma, WA 98402

Gary and Matthew Moser are the plaintiffs in this matter.

Eileen Anderson, MHP (will testify)  
Pierce County Sheriff's Department  
910 Tacoma Avenue South  
Tacoma, WA 98402

Ms. Anderson is a Mental Health Professional working with the Pierce County Sheriff's Department, who evaluated Matthew Moser prior to his rape.

Ann Elek, MHP (will testify)  
Pierce County Sheriff's Department  
910 Tacoma Avenue South  
Tacoma, WA 98402

Ms. Elek is a Mental Health Professional working with the Pierce County Sheriff's Department, who evaluated Matthew Moser prior to his rape.

Jim Jorgenson, MHP (will testify)  
Pierce County Sheriff's Department  
910 Tacoma Avenue South  
Tacoma, WA 98402

Mr. Jorgenson is a Mental Health Professional working with the Pierce County Sheriff's Department, who evaluated Matthew Moser prior to his rape.

Kenneth Friermuth (will testify)  
Pierce County Sheriff's Department  
910 Tacoma Avenue South  
Tacoma WA 98402

1 Mr. Friermuth is a Corrections Officer at the Pierce County Detention Center.

2 Steve MacKenn (may testify)  
3 Pierce County Sheriff's Department  
4 910 Tacoma Avenue South  
Tacoma WA 98402

5 Mr. MacKenn is a Corrections Officer at the Pierce County Detention Center.

6 Eileen Bisson (may testify)  
7 Pierce County Sheriff's Department  
8 910 Tacoma Avenue South  
Tacoma, WA 98402

9 Ms. Bisson is Chief of Corrections of the Pierce County Sheriff's Department  
10 Corrections Bureau. She was involved in an investigation relating to the rape of Matthew Moser.

11 Ilene Anderson, MHP (will testify)  
12 Pierce County Sheriff's Department  
13 910 Tacoma Avenue South  
Tacoma, WA 98402

14 Ms. Anderson is a Mental Health Professional working with the Pierce County  
15 Sheriff's Department.

16 Officer E. Wade, Badge No. 396 (may testify)  
17 Tacoma Police Department  
18 930 Tacoma Avenue South  
Tacoma, WA 98402

19 Officer Wade arrested David Marshall Nelson and turned him over to the Pierce  
20 County Sheriff's Office on December 15, 2002.

21 On behalf of Defendant:

22 Judy Snow, MHP (may testify)  
23 Pierce County Sheriff's Department  
24 910 Tacoma Avenue South  
Tacoma, WA 98402

25 Ms. Snow is a Mental Health Professional working with the Pierce County Sheriff's  
26 Department, who evaluated Matthew Moser prior to his rape.

1 Deputy Bruce Parks (may testify)  
2 Pierce County Sheriff's Department  
3 930 Tacoma Avenue South  
4 Tacoma WA 98402

5 Mr. Parks is a Corrections Officer at the Pierce County Detention Center.

6 David Marshall Nelson (may testify)  
7 Washington State Penitentiary  
8 Walla Walla, WA

9 Me. Nelson is the accused and convicted rapist.

10 **EXHIBITS**

11 (a) Admissibility stipulated:

12 Plaintiffs Exhibits:

- 13 1. Memorandum of February 18, 2003 from Chief Bisson to Sheriff Pastor
- 14 2. Pierce County Detention and Corrections Center Incident Report
- 15 3. Matthew Moser's handwritten note of February 5, 2005 to jail officials  
16 regarding rape
- 17 4. Matthew's "kite" from February 5, 2005 regarding being removed from cell  
18 after rape
- 19 5. Drawing of Pierce County Jail offices including classification office and MHP  
20 office (*See* Exhibit 19 to Declaration of Beauregard on MSJ)
- 21 6. Tacoma Police Department Incident Report (02-389-0853) re: Nelson arrest
- 22 7. Pierce County Sheriff's Department Booking ID Sheet
- 23 8. Pierce County Sheriff's Department Inmate Behavioral Log for Matthew  
24 Moser
- 25 9. Pierce County Sheriff's Department Inmate Behavioral Log for David Nelson
- 26 10. Pierce County Record of Mental Health Care for Matthew dated November 1,  
2002
11. Mental Health Chronological Record for Matthew dated November 5, 2002

12. Mental Health Chronological Record for Matthew dated November 6, 2002
13. Mental Health Chronological Report for Matthew dated December 11, 2002
14. Mental Health Chronological Report for Matthew dated January 31, 2003
15. Mental Health Chronological Report for Matthew dated February 5, 2003
16. Mental Health Referral for Matthew dated November 1, 2002
17. Mental Health Referral for Matthew dated November 11, 2002
18. Mental Health Referral for Matthew dated January 31, 2003
19. Pierce County Record of Mental Health Care for Nelson dated December 15, 2002
20. Pierce County Primary Classification Sheet of Nelson dated December 16, 2002
21. Pierce County Detention and Corrections Center Suicide Report for Nelson dated December 15, 2002
22. Pierce County Booking and Identification Sheet (with picture) for Nelson dated December 15, 2002
23. Mental Health Chronological Report for Nelson dated December 16, 2002
24. Mental Health Chronological Report for Nelson dated December 17, 2002
25. Mental Health Chronological Report for Nelson dated January 30, 2003
26. Mental Health Referral for Nelson dated December 15, 2002
27. Mental Health Referral for Nelson dated December 16, 2002
28. Mental Health Referral for Nelson dated December 17, 2002
29. Photographs of Matthew Moser
30. Photographs of the Pierce County Jail
31. Photographs of the County/City Building of Pierce County
32. American Standards for Adult Local Detention Facilities (Alvin Cohn excerpt)

Defendant's Exhibits:

33. A floor plan of the Pierce County Jail

34. Order for Examination by Western State Hospital for Matthew Moser

(b) Authenticity stipulated, admissibility disputed

Plaintiffs' Exhibits

35. Email dated February 19, 2003 from Officer Friermuth to Chief Bisson

Defendant's Exhibits

36. A demonstrative exhibit of the Pierce County jail Objective Classification System and description of the classification scores.

37. All Mental Health records for David Marshall Nelson during his stay in the Pierce County Jail from December 15, 2002 through February 5, 2003.

38. Pierce County Sheriff's Department (PCSD) Corrections Bureau OJC Procedure

39. PCSD Corrections Bureau OJC Routine Reclassification for David Marshall Nelson

40. Fife Police Department Arrest Incident Report of Matthew Moser dated October 29, 2002.

41. Order transporting Matthew Moser to adult jail.

42. All Mental Health screening reports for Matthew Moser.

43. Forensic Mental Health Evaluation of Matthew Moser

44. PCSD Corrections Bureau OJC Primary Classification for Matthew Moser

45. Criminal history of Matthew Moser

46. PCSD Corrections Bureau OJC Primary Classification for Matthew Moser

47. All Inmate Behavioral Logs and Information Reports for Matthew Moser

48. School record for Matthew Moser

49. DSHS records for Matthew Moser

50. Juvenile records for Matthew Moser

(c) Authenticity and admissibility disputed:

Plaintiff's exhibits:

None

Defendant's exhibits:

51. All other booking and jail records, including booking photographs, of Matthew Moser and David Nelson not otherwise identified

52. Validation Study of Pierce County Objective Classification System (OJC) Options.

### ACTIONS BY THE COURT

(a) Case is scheduled for trial with a jury on June 13, 2005.

(b) Trial briefs shall be submitted to the Court on or before May 27, 2005.

(c) Voir dire/jury instructions due on May 27, 2005.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 9<sup>th</sup> day of June, 2005.



Karen L. Strombom  
United States Magistrate Judge

Presented By:

GORDON, THOMAS, HONEYWELL, MALANCA,  
PETERSON & DAHEIM LLP

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John R. Connelly, Jr., WSBA No. 12183  
Lincoln C. Beauregard, WSBA No. 32878  
Attorneys for Plaintiffs

GERALD A. HORNE  
PIERCE COUNTY PROSECUTING ATTORNEY

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Ronald L. Williams, WSBA No. 13927  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Ronald LaMar Williams at [rwillia@co.pierce.wa.us](mailto:rwillia@co.pierce.wa.us).

/s/ \_\_\_\_\_  
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